IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

P.I. L. NO.84 OF 2003

Maruti Sahebrao Bhapkar & Ors. ...Petitioners.

Versus

Pimpri Chinchwad Municipal Corporation

(through its Conmmissioner) & Ors. ...Respondents.

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Mr. S.S. Shah for the Petitioners.
Mr.Deepak R. More with Mr. A.J. Suryawanshi for Respondent Nos.1 and 2.
Mr. R.M. Patne, AGP for Respondent No.3.
Mr.Vineet Naik for Respondent No.4.

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**CORAM : DALVEER BHANDARI, CJ, AND**

**DR. D.Y. CHANDRACHUD, J.**

October 20, 2004.

**P.C.:**

The Petitioners who are tax payers residing within the Municipal limits of the Primpri-Chinchwad Municipal Corporation have challenged an agreement dated 2nd September 1995 entered into by

the Corporation with the Fourth Respondent which is a public charitable trust. The petition which seeks to impugn the legality and validity of the aforesaid agreement was filed in this Court on 16th August 2003, nearly eight years after the execution of the agreement.

2. In the affidavit which has been filed on behalf of the First and the Fourth Respondents, the bonafides of the Petitioners have been questioned. It has been stated that Petitioners 1, 2 and 6 contested the General Elections of the Municipal Corporation in 2002. Petitioner Nos.1 and 2 contested the election from Ward No.23B, whereas Petitioner No.6 contested the election from Ward No.33A. The Petitioners aforesaid are stated to have been defeated at the election. In so far as Petitioner No.5 is concerned, it is stated that he is an Ex-Vice President of the Khadki Cantonment Board.

3. The Municipal Corporation granted its sanction to the agreement that was to be entered into with the Fourth Respondent on 21st August 1995, and the agreement was entered into on 2nd September 1995.

4. In the affidavit in reply that has been filed on behalf of the Fourth Respondent, it has been stated that the Medical College conducted by the Trust commenced functioning from August 1996. At the time when the College was started, the Fourth Respondent did not have its own Hospital facility. The Fourth Respondent constructed its own Hospital in November 1999 and initially 100 beds became operational. By December 2000, the 500 bedded Hospital of the Fourth Respondent is stated to have become fully operational and functional. The Fourth Respondent, it has been stated, has nonetheless continued to abide by the terms of the agreement without default. The term of the agreement is 25 years. Under the agreement, the Fourth Respondent has agreed to pay an amount of Rs.5 lakhs for the first Academic Year with an escalation of Rs.1 lakh every year so that the total amount which would be payable for the 25th year would be Rs.29 lakhs. In addition, the Fourth Respondent has agreed to pay Rs.200/- per bed per annum for each of the 300 beds which works out to Rs.60,000/- per year. Until date an amount of Rs. 49.40 lakhs has been paid to the First Respondent Corporation.

In the affidavit that has been filed on behalf of the Municipal Corporation it has been stated that a total amount of Rs. 4.25 crores would be received by the Corporation during the term of the agreement as a result whereof the amount actually paid by the Trust would work out at the rate of 15.52 per bed per day for 300 beds. It has also been stated that in addition, if the amount which is paid at the rate of Rs.200/- per bed is taken into account, the net revenue would be Rs. 16.07 per bed which is higher than what has been prescribed by the Government Resolution dated 30th October 1994.

5. We called upon Counsel appearing on behalf of the Petitioners to establish before the Court as to how the agreement that has been entered into is contrary to law or against the terms of the relevant Government Resolution holding the field. Neither has the Government Resolution been placed before the Court, nor has any attempt been made to demonstrate before the Court as to how the agreement is prejudicial to the interest of the Corporation. In fact, on behalf of the Fourth Respondent it has been stated by Counsel that the Fourth Respondent at this stage does not need the facility of the

beds attached to the Municipal Hospital since the Fourth Respondent has its own Hospital facility. Counsel submitted that the Fourth Respondent would be willing to terminate the agreement, but however, in view of the fact that the agreement had been arrived at with the Municipal Corporation in 1995, when the Medical College needed a hospital facility since its own hospital was not yet ready, the Fourth Respondent has continued to observe the terms and conditions without any default even thereafter. Having heard Counsel appearing on behalf of the Petitioners and the Respondents, we are of the view that the Petitioners have been unable to establish any illegality in the agreement that was entered into by the Municipal Corporation with the Fourth Respondent. There is a gross and unexplained delay of eight years in the institution of these proceedings. Some, at least from amongst the Petitioners are persons who have unsuccessfully contested elections to the Municipal Corporation. The petition does not appear to be a genuine attempt at invoking the jurisdiction of the Court in the public interest. We do not find any merit in the petition. The petition is accordingly dismissed.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.